

# OPEN MEETING ITEM



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**COMMISSIONERS**  
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WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



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ARIZONA CORPORATION COMMISSION 2003 NOV 17 P 12 29

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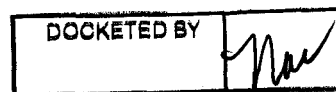
DATE: NOVEMBER 17, 2003 Arizona Corporation Commission

**DOCKETED**

DOCKET NO: W-01653A-03-0243

NOV 17 2003

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

**FRED SHOOK vs. PARK VALLEY WATER COMPANY  
(COMPLAINT)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 26, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 2, 2003 and DECEMBER 3, 2003

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF:

9 FRED SHOOK,

10 Complainant,

11 vs.

12 PARK VALLEY WATER COMPANY,

13 Respondent.

DOCKET NO. W-01653A-03-0243

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

14 DATE OF HEARING:

October 1, 2003

15 PLACE OF HEARING:

Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

17 APPEARANCES:

Mr. Fred Shook, in propria persona; and

18 Grant Williams, P.C., by Mr. Kenneth B.  
19 Vaughn, on behalf of Respondent, Park Valley  
20 Water Company.

21 **BY THE COMMISSION:**

22 On April 18, 2003, Fred Shook ("Complainant") filed with the Arizona Corporation  
23 Commission ("Commission") a Complaint against Park Valley Water Company ("PVWC" or  
24 "Respondent").

25 On May 15, 2003, PVWC filed an Answer to the Complaint and a Procedural Order was  
26 issued scheduling a pre-hearing conference on June 5, 2003.

27 On May 29, 2003, Respondent's counsel requested a continuance due to a scheduling conflict.  
28 Complainant did not object to the request.

On June 2, 2003, by Procedural Order, the proceeding was continued to June 17, 2003.

On June 4, 2003, the Complainant telephonically requested that the pre-hearing be  
rescheduled and by Procedural Order, the proceeding was continued to July 10, 2003.

1 On July 10, 2003, pursuant to the Commission's Procedural Order, a pre-hearing conference  
 2 was held. The Complainant appeared on his own behalf and the Respondent appeared with counsel.  
 3 The issues raised in the Complaint were reviewed and since a settlement could not be reached, the  
 4 parties agreed that a hearing be scheduled in approximately 90 days.

5 On July 14, 2003, by Procedural Order, the proceeding was set for hearing on October 1,  
 6 2003.

7 On October 1, 2003, a full public hearing was convened before a duly authorized  
 8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant  
 9 appeared on his own behalf and PVWC appeared with counsel. At the conclusion of the hearing, the  
 10 matter was taken under advisement pending submission of a Recommended Opinion and Order to the  
 11 Commission.

12 \* \* \* \* \*

13 Having considered the entire record herein and being fully advised in the premises, the  
 14 Commission finds, concludes, and orders that:

### 15 FINDINGS OF FACT

16 1. Pursuant to authority granted by the Commission, PVWC provides public water utility  
 17 service to approximately 700 customers in a portion of Show Low, Arizona.

18 2. On April 18, 2003, Mr. Shook, a customer of PVWC, filed a Complaint against the  
 19 Respondent alleging that he had entered into a main extension agreement ("Agreement") which was  
 20 dated May 1, 1995 with PVWC. Mr. Shook alleged that the Agreement had neither been filed or  
 21 approved by the Commission, and was in violation of A.A.C. R14-2-406(M) ("Rule"). He requested  
 22 a full refund of that portion of the refundable advance as set forth by the Rule. Mr. Shook further  
 23 alleged that he was entitled to \$400 in damages for unnecessary expenses which he had incurred due  
 24 to the mislocation of his water meter when his meter and his service line were first installed.

25 3. The Commission's Rule at Section M provides as follows:

26 All agreements under this rule shall be filed with and approved by the  
 27 Utilities Division of the Commission. No agreement shall be approved  
 28 unless accompanied by a Certificate of Approval to Construct as issued by  
 the Arizona Department of Health Services. Where agreements for main  
 extensions are not filed and approved by the Utilities Division, the

1 refundable advance shall be immediately due and payable to the person  
2 making the advance.

3 4. Mr. Shook entered into the Agreement with PVWC in 1995 in order to secure water  
4 service to his property located on what was then a dirt road at 2001 West McNeil where it meets 20<sup>th</sup>  
5 Avenue in Show Low, Arizona. His lot was in a wooded area which had not been heavily developed  
6 at the time. The Agreement provided for the construction on West McNeil of a 650 foot main  
7 extension by the Respondent to Mr. Shook's property for a cost \$4,875 for labor and materials, \$200  
8 for meter installation and \$100 for the new meter for a total sum of \$5,175.<sup>1</sup>

9 5. Under the terms of the Agreement on its first page, Mr. Shook was required to make  
10 an initial payment of \$2,587 to PVWC, which was paid at or about the date of the execution of the  
11 Agreement, with the remaining balance, \$2,587, to be paid within 60 days of the completion of the  
12 project.

13 6. While the Agreement contains a space to indicate the amount of the refundable  
14 advance in aid of construction, the typewritten sum of \$2,587 was crossed out and a handwritten sum  
15 of \$4,875, which appears below the typewritten sum, was also crossed out. This left a third blank  
16 line which was filled in with a second handwritten sum of \$4,647 denoted as a non-refundable  
17 contribution for construction.

18 7. Also appearing, on the first page of the Agreement, are the handwritten initials of Mr.  
19 Shook, which appear once to the left of the \$4,875 handwritten sum and the initials of Mr. Jim  
20 McCarty, Respondent's president, which appear twice, once to the right of the \$4,875 handwritten  
21 sum and a second time to the right of the \$4,647 handwritten sum.

22 8. Mr. Shook insists that the handwritten sum, \$4,647, represents what was to be his  
23 refundable advance.<sup>2</sup>

24 9. Pursuant to the terms of the Agreement, Mr. Shook was to receive ten percent of the  
25 total gross annual revenues for any service line directly connected to the main for a period of ten

26 <sup>1</sup> According to the Agreement, these amounts were based on a cost estimate dated April 11, 1995.

27 <sup>2</sup> Mr. Shook's version is supported in part by Exhibit C-2, a document captioned "Shook Water Extension,  
28 05/11/95-completed" which has a column marked "Estimate" and reflects a sum of \$4,875 as "Water Ext. Refund" and  
another column marked "Actual Costs" which reflects a sum of \$4,647 opposite "Water Ext. Refund." The document  
further related the third party contractor, Floyd Gilmore, who had installed the main extension, did not require as much  
labor and materials. Although Exhibit C-2 appears to have been a PVWC worksheet, Mr. Shook was unaware who had  
prepared the document.

1 years. Any balance remaining at the end of the ten year period would become non-refundable.

2 10. Mr. Shook has received refunds of approximately \$20 per year pursuant to the terms  
3 of the Agreement for the past eight years, and he does not dispute the amount that he was refunded by  
4 the Respondent during this period of time.

5 11. Mr. Shook further alleged that PVWC should pay him \$400 as damages resulting from  
6 the improper placement of his water meter at the time of its initial installation. The meter was placed  
7 in front of a split rail fence because of the mutual belief of Mr. Shook and Respondent that the fence  
8 ran across his front property line.

9 12. Mr. Shook testified that because of the misplacement of his meter, he had to pay a  
10 third party \$200 for hand digging a trench for his service line through the trees on his property  
11 approximately 30 feet further than it needed to be. He valued his own labor at \$100 and added the  
12 estimated value of the pipe (\$100) later removed by a private contractor when his meter had to be  
13 relocated in 2000 due to a city road paving project.

14 13. At the time Mr. Shook's water meter was originally installed, both he and Respondent  
15 had been unaware that the public easement extended 50 feet onto his property.

16 14. To support his claim with respect to the movement of his meter, Mr. Shook offered  
17 into evidence a copy of a plumbing invoice from Church Plumbing Service dated September 14,  
18 1995, which totaled \$2,771 and includes the cost to rough in plumbing for his residence on West  
19 McNeil. The invoice did not break out the cost of the installation of his service line with specificity.

20 15. Subsequently, Mr. Shook revealed that he had initially contacted the Commission's  
21 Utilities Division ("Staff") in early 2003 because he had become "upset" when the Respondent  
22 connected his pressurized main extension to a six inch gravity fed main on 20<sup>th</sup> Avenue across the  
23 street from his residence to loop its system. The other main was utilized to serve other customers  
24 whose service lines were connected to it and Mr. Shook believed that he should receive a percentage  
25 of their revenues, pursuant to the terms of his Agreement.<sup>3</sup>

26 16. An incidental issue raised during Mr. Shook's closing argument concerned whether  
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28 <sup>3</sup> Pursuant to A.A.C. R14-2-406(D), Mr. Shook is not entitled to any portion of the revenues from these customers.

1 the main extension which is the subject of the Agreement herein was necessary at all. It appears that  
2 in 1995 the six-inch gravity fed main which is directly across 20<sup>th</sup> Avenue from Mr. Shook's property  
3 was connected to a 24-foot tall storage tank, but the Respondent had refused to connect a service line  
4 for Mr. Shook allegedly because of insufficient pressure in the line to provide him with water service.  
5 While the denial of this service connection caused Mr. Shook to bear his main extension expenses,  
6 Mr. Shook did not complain to the Commission of this issue with the Respondent in 1995.<sup>4</sup>

7 17. Mr. Michael Mack, PVWC's present certified operator, testified that Respondent does  
8 not place water meters inside of a property owner's fence because they become inaccessible to the  
9 Company's meter readers.

10 18. With respect to Mr. Shook's claim for the value of the copper piping which had been  
11 removed when his meter had to be relocated because of a road paving project, PVWC's operator  
12 testified that the value of the pipe was approximately \$20 and that Respondent would be happy to  
13 replace the approximately 25 to 30 feet of copper tubing for Mr. Shook. He further added that the  
14 relocation was done at PVWC's expense.

15 19. PVWC's vice-president of operations, Ms. Victoria McCarty, who became employed  
16 by PVWC in 1998, testified for Respondent stating that she is involved in its day-to-day operations.

17 20. She testified that since Respondent's inception, it had a policy of requesting  
18 Commission approval for any main extension agreements. She acknowledged that normally the  
19 Commission would acknowledge receipt of the agreement and its approval by letter. With the  
20 exception of Mr. Shook's Agreement, Respondent presently has three other main extension  
21 agreements which have been filed with, and approved by the Commission.

22 21. Ms. McCarty indicated that Respondent's files do not contain an approval of the  
23 Agreement in question from the Commission and she has no way of knowing whether a copy of Mr.  
24 Shook's Agreement was sent to the Commission for its approval because she was not employed by  
25 the Company at the time.

26 22. According to Ms. McCarty, the total cost actually paid by Mr. Shook for the main  
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28 <sup>4</sup> When Mr. Shook's main extension was recently connected to this gravity fed main to loop Respondent's system, PVWC connected his meter to the gravity fed main.

1 extension was \$4,647 and that this sum constitutes a non-refundable contribution in aid of  
2 construction under the Agreement.

3       23.     Respondent's position is that Mr. Shook was only entitled to a refund not to exceed  
4 the sum of \$528, the difference between the original agreement price of \$5,175 and the \$4,647 which  
5 appears as a non-refundable contribution on the Agreement. PVWC maintains that the only sum that  
6 is owed to Mr. Shook is the \$528 less what has already been paid to him in his annual refunds  
7 (approximately \$200), leaving a balance of \$325 depending on revenues from his main extension  
8 over the next two years.

9       24.     Respondent argues that since Mr. Shook's main extension would produce little  
10 revenue, that the amount refunded should not exceed approximately \$500 over the life of the  
11 Agreement.

12       25.     We find Respondent entered into a main extension agreement that was not filed and  
13 approved by the Commission.

14       26.     The Commission's Rule provides that all main extension agreements are required to  
15 be filed with the Commission's Staff for its approval. In the event a main extension agreement is not  
16 filed for Staff's approval, the refundable advance is immediately due and payable to the person who  
17 paid the advance.

18       27.     Pursuant to the Rule, the refundable advance of \$4,647 is immediately due and  
19 payable to Mr. Shook. The sum due should be reduced by any payments previously made as refunds.  
20 The Commission's Rule was adopted to protect individuals such as Mr. Shook from being  
21 overcharged or being taken advantage of by a water utility.

22       28.     While the Agreement on its face is inconclusive, Respondent's argument that Mr.  
23 Shook is entitled to only \$528 less payments previously paid as refunds is unacceptable since there is  
24 no evidence that Respondent complied with the Commission's Rule. Additionally, PVWC's position  
25 would violate Commission policy that all monies paid for a main extension are subject to refund as  
26 advances in aid of construction unless approved otherwise.

27       29.     The issue with respect to whether Mr. Shook's main extension was actually necessary  
28 to service his property is rendered moot by the fact that the Respondent did not file the Agreement for

1 approval by the Commission's Staff, rendering the entire sum which should have been refundable  
2 under the terms of the Agreement due to Mr. Shook.

3 30. With respect to that portion of Mr. Shook's Complaint for the sum of \$400 to  
4 compensate him for the misplacement of his meter initially, there is insufficient evidence to establish  
5 any liability on the part of the Respondent.

6 **CONCLUSIONS OF LAW**

7 1. PVWC is a public service corporation within the meaning of Article XV of the  
8 Constitution and A.R.S. § 40-246.

9 2. Pursuant to A.A.C. R14-2-406, the Commission has jurisdiction over PVWC and the  
10 Complaint herein.

11 3. PVWC should refund to the Complainant herein the sum of \$4,647 less any sums  
12 previously paid as refunds pursuant to the terms of the Agreement pursuant to A.A.C. R14-2-406(M).

13 **ORDER**

14 IT IS THEREFORE ORDERED that Park Valley Water Company shall refund to Mr. Fred  
15 Shook the difference between the sum of \$4,647 less any amounts previously paid as refunds under  
16 the terms of the Agreement herein.

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IT IS FURTHER ORDERED that Park Valley Water Company shall make this payment within 60 days of the effective date of this Decision and file certification with the Commission's Docket Control that payment has been paid to Mr. Shook in conformity with this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2003.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
MES:mlj

1 SERVICE LIST FOR:

W-01653A-03-0243

2 DOCKET NO.:

PARK VALLEY WATER COMPANY

3

Fred Shook  
4 2001 W. McNeil  
5 Show Low, AZ 85901

6 Merwin D. Grant  
Kenneth B. Vaughn  
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7 3200 North Central Avenue, Ste. 2400  
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8 Attorney for Respondent

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12 Ernest Johnson, Director  
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